



CHAPTER VI : PERMANENCY PLANNING

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A. Permanency Planning: *Children Can't Wait*

The premise in this chapter is that the court has conducted the adjudicatory hearing, and has found the child to be within the jurisdiction of the Child Protective Act (CPA).¹ The next phase in a CPA case is the permanency planning process. This chapter begins with information about fundamental permanency planning concepts. Later sections address the specific steps in the permanency planning process. These concepts, and these steps in the permanency planning process, are **crucial** to achieving timely permanency for the child.

The policy of the State of Idaho,² and the purpose of permanency planning, is to ensure that every child has a safe, healthy, and permanent home, and to ensure that the child has that home as soon as possible. Permanency for the child means either a safe and permanent return to the parent(s), or a safe and permanent placement with a new family. It is essential that permanency be achieved in a timely manner. The child's formative years and future are at stake.

To achieve permanency for the child, the court must assume substantially increased duties and functions in the process. The traditional role of the court is neutral and detached, generally limited to deciding the contested issues, as they are framed by the parties, when they are brought before the court by the parties, based on the evidence the parties choose to present. A more activist model is required for successful permanency – one in which the judge conducts thorough inquiry, addresses the full spectrum of issues affecting permanency for child, determines permanency goals, establishes plans for meeting those goals, and enforces deadlines for achieving those goals.

To achieve timely permanency for the child, the focus on permanency planning must begin when the child welfare agency and the court first become involved with the family. Certain critical elements must be thoroughly examined *and clearly documented in the court record* well before the permanency hearing or their oversight can seriously impede timely permanency for a child.

Child welfare agencies should immediately implement certain practices that have a dramatic, positive impact on a child's options for permanency and the timeliness of the permanent plan. Judges must understand these practices to ensure that they are implemented well before the permanency hearing.

Finally, when judges must make permanency planning decisions, it is important that they understand three concepts – what are the preferred options for permanency, what makes a home permanent, and what does ASFA mean by “compelling reasons” why it would not be in the best interest of child to proceed with adoption or legal guardianship.

Because of the importance of these preparatory elements to successful permanency hearings, this section will:

- Summarize the critical elements courts must fully explore early in the case so that the permanency process is not stalled;

¹ Idaho Code §§ 16-1601 *et seq.* see particularly §16-1608.

² See Idaho Code §16-1601.

- Review child welfare practices of concurrent planning, use of foster-adopt homes, and family decision-making;
- Explain the permanency concepts of preferred options for permanency, what makes a home permanent, and compelling reasons.

1. **Court Best Practices Prior to the Permanency Hearing** (From the Beginning of a Child Protection Case)

Earlier chapters provide important detail about critical steps in a child protection case, from the time a child is removed from the home, through the determination of whether reunification can occur. The following five issues can cause significant delays at the time of the permanency hearing if they are not adequately addressed early in the case. These five issues are:

- Early identification and involvement of absent parents
- Early identification and involvement of relatives
- Ensuring quality plans and services are available to the family to assist with reunification
- Complying with the Interstate Compact on the Placement of Children
- Complying with the Indian Child Welfare Act

♦ **Early Identification and Involvement of Absent Parents**

At the very first hearing on a petition alleging abuse or neglect, the court should require efforts to include all parents of the child. Absent parents and putative fathers must be identified, located and brought into the court process as quickly as possible.³ Timely resolution of paternity issues is both in the best interests of the child and essential to avoiding delays at subsequent points

in the court process. The court must ensure that the efforts of the child welfare agency are thorough and diligent in locating and involving all legal and putative parents.

♦ **Early Identification and Involvement of Relatives**

It is equally important that the agency identify all relatives of the mother, father or putative father(s) of the child and to thoroughly investigate the appropriateness of these relatives as potential caretakers for the child. It should not be assumed that because the parents have serious problems, all of the relatives must also have serious problems. Nor should it be assumed that a willing relative is an appropriate caretaker for the child. Investigation of potential caretakers is essential to ensure the safety of the child. Identification and investigation of all potential caretakers is essential to ensure that the placement selected is the one that best meets the needs of the child.⁴

When courts and agencies have not conducted thorough relative searches and reunification is ruled out, they can be faced with the difficulty of deciding between adoption by a foster parent with whom the child has bonded and a relative who is appropriate but did not previously know of the child's need for a permanent home. If, however, the relative search was thorough and a

³ Idaho Code §16-1606(a) requires notice to each parent or guardian of the child.

⁴ If the child is an Indian child, the Indian Child Welfare Act establishes a clear placement preference with members of the child's extended or tribal family. 25 U.S.C. §1915.

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relative who has previously chosen not to come forward changes his or her mind, the potential arguments in favor of keeping the child with a relative are less persuasive. When agencies and courts do their job thoroughly, they should not have to choose between a foster parent adoption or a relative adoption.

◆ **Ensuring Quality Plans and Services are Available to the Family to Assist with Reunification**

Thorough assessment should be made both of the child's needs, and the parent's needs, as well as the services available to meet those needs. If the needs of a child and family have not been thoroughly assessed and appropriate services made available to families to assist with reunification, a valid argument could be made at the permanency hearing that reasonable efforts have not been made to reunify them with their child. The tardy provision of services will cause a significant delay in achieving permanency for the child, by delaying reunification of the family, or delaying the court's ability to terminate parental rights.

◆ **Complying with the Interstate Compact on the Placement of Children (ICPC)**

Problems arise when the proposed placement for a child is in another state. Jurisdiction of a state court or a state agency ends at the state line. The agency in the other state has no obligation to make pre-placement investigations, to supervise placements, or to provide services to promote the long-term success of the placement. The sending state is not financially or legally responsible for a child outside its jurisdiction. There is a tremendous risk that a child placed in another state will "fall between the cracks" of the two state systems. But given the geographic mobility of current society, a child's best options for temporary or permanent placement may be in another state.

The ICPC is a statutory law, enacted uniformly by state legislatures in all 50 states, the District of Columbia and the U.S. Virgin Islands for the purpose of ensuring that children are protected when placed between states.⁵ The agency in the sending state must submit a written application to the agency in the receiving state, which decides whether or not to accept the placement. Once accepted, the agencies in the two states can enter into agreements as to what services the agency in the receiving state will provide on behalf of the agency in the sending state. The sending state remains financially responsible for the cost of the services. The court in the sending state retains jurisdiction over the child, and may order the child returned to the sending state. The ICPC placement terminates when the child returns to the sending state, when the child is adopted or the child reaches the age of majority, or when the receiving state agrees to be discharged.

A child may not be placed out-of-state without a court order.⁶ The court should require that the placement be made in accordance with the ICPC, and that the placement agreement specify the services to be provided by the receiving state. Those services should include a written report of pre-placement investigations, and written monthly reports as to the status and welfare of the child while in the out-of-state placement. Because the ICPC process can be time-consuming, it should be implemented as early as possible in the CPA process when an out-of-state placement for a child is contemplated.

⁵ See Idaho Code §§16-2101 *et seq.*

⁶ Idaho Code §16-1623(h)

Caution: “Courtesy supervision” is **not** an ICPC placement. It is an informal representation by an agency in another state that it will supervise the placement of the child in the other state as a courtesy to the agency in the home state. It has no legal effect whatsoever, and therefore offers none of the benefits or protections of the ICPC.

♦ **Complying with the Indian Child Welfare Act (ICWA)**

The Indian Child Welfare Act of 1978 (ICWA) was passed to address the removal of Indian children from their homes and their placement with non-Indian families.⁷ ICWA establishes special procedural and substantive safeguards to protect the interests of Indian children and families, including tribal determination of who is an Indian child, full tribal participation in planning and decision-making in the child protection case, placement preferences for extended family members and other Indian families identified by the child’s tribe, and, when requested, transfer of the child protection case to the child’s tribal court.

To prevent these procedures from causing Indian children to linger in foster care, the courts should:

- Identify at the earliest possible time whether ICWA applies to one or more children in a case;⁸
- Have procedures in place for immediate notice of the pendency of a case to the child’s Indian tribe;
- Open lines of communication with the tribal representative to ensure that complete information is exchanged and that time delays are avoided;
- Be familiar with and follow the procedural and substantive requirements set out in ICWA; and
- Make sure that all notices, consents, and “active efforts” are documented in accordance with the requirements of the act.

When courts fail to ensure that Indian children are identified and the requirements of ICWA are followed from the beginning of the court process, and issues concerning ICWA are raised for the first time at a permanency hearing, the court may have failed to identify appropriate care options for the child. This oversight may delay the court’s ability to terminate parental rights or otherwise provide for a permanent plan for the child, and may set up the possibility of reversal of termination on appeal.⁹

⁷ 25 U.S.C. §1901 *et seq.*

⁸ Determining whether ICWA applies means not only determining whether the child is a member of a tribe, but whether the child is eligible for membership in a tribe. So whenever the court has reason to believe that the child may be an Indian child, the court should require the agency to investigate to determine whether the child is eligible for membership in an Indian tribe. Each Indian tribe establishes the requirements that must be met to be a member of that tribe. The tribe’s determination of membership is final, and is entitled to full faith and credit under §1911(d) of ICWA and federal case law. *See e.g. Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)

⁹ *See Indian Tribe v. Doe*, 123 Idaho 464, 849 P.2d 925 (1993) and *Doe v. Doe*, 127 Idaho 452, 902 P.2d 477 (1995), for Idaho decisions applying ICWA.

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2. Child Welfare Best Practices Prior to the Permanency Hearing

In recent years, the practices of concurrent planning, use of foster-adopt homes, and family decision-making have been implemented in many jurisdictions. These child welfare agency tools have the capacity to significantly reduce the length of time children spend in limbo waiting for the court to make a decision on their permanent plan. They also have the capacity to create options for permanency that might not otherwise be available.

◆ Concurrent Planning

Concurrent planning is based on the concept that it is possible to predict risk of failure of reunification for a family. Risk assessment testing instruments are available to agencies, that should be administered in each case to assess the risk of failure of reunification, and the results of the test should be made available to the court as part of the planning process.

Issues such as abandonment, serious physical abuse, previous history of termination of parental rights, previous births of drug-affected newborns, numerous convictions for serious crimes, and other factors and indicators of high risk for reunification. When the risk is high, concurrent plans of reunification and an alternative permanent placement should be pursued. When reunification is either likely or is not indicated, a single-outcome plan should be implemented.¹⁰

Concurrent planning is also based on the concept that it is possible to plan for two different outcomes at the same time. The reunification plan identifies the issues that need to be resolved and the tasks necessary to resolve those issues to enable the child to be safely returned home. The alternative permanency plan is the plan to identify all other options for permanent placement of the child, to assess the child's needs and the options for permanent placement in light of the child's needs, to determine which option best meets the child's needs, and to implement that option. The purpose of the alternative permanency plan is to have a back-up plan in place in case the reunification plan fails.

The model of concurrent planning was developed with the expectation that social workers involved in the process would have very low caseloads.¹¹ It is designed for implementation during the first 90 days of a case. Some of the key elements of concurrent planning are:

- Full disclosure of the concurrent plans to parents as soon as the decision is made; in the case of an Indian child, full disclosure must also be made to Indian custodians and the child's tribe;
- Placement of the child in a relative-adopt or foster-adopt home to reduce the number of times the child must move;¹²
- Strict time limits on case progress and scheduling of hearings;

¹⁰ Under Idaho law, a concurrent plan is required when aggravated circumstances are not found and the child is placed in the custody of the state. A reunification plan is not required when aggravated circumstances are found. An alternative permanency plan is not required when the child is returned home under agency supervision. Idaho Code §§16-1610(b), 16-1608(e)(4).

¹¹ Linda Katz, of Lutheran Social Services in Washington State, is the creator of this model. The social workers of her agency who were involved in concurrent planning had caseloads of approximately 10.

¹² According to the United States General Accounting Office report *FOSTER CARE: HHS Could Better Facilitate the Interjurisdictional Adoption Process*, November 1999, "of those foster children who are adopted, about 78 percent are adopted by their foster parents or relatives.

- Active efforts to have regular and meaningful visitation between parent and child;
- Involving parents in planning for the future of their children if they cannot be with their children;
- Detailed small steps to accomplish the plan, in weekly and monthly increments, accompanied by parental record-keeping and frequent court reviews;
- Progress measured by behavior, documented in reports submitted to the court;
- Excellent social work, supported by training, consultation and reasonable case loads; and
- Defining success by timely permanency, whether it is reunification or the alternate plan.

To ensure the occurrence of good faith efforts at reunification under concurrent planning, it is critical that foster and relative families receive additional training and that interactions between the foster family or relative, the birth family and the child are carefully monitored. Using family decision-making or other means of actively involving the extended family will help to ensure that active and reasonable efforts are made to reunify and that the focus on the child's best interests is maintained.

When concurrent planning is used, either the parents should be ready for the child's return, or the agency should be prepared to proceed with filing for termination of parental rights, prior to the time of the permanency hearing. If reunification fails, the child should already be in the home that will become the adoptive home.

The court should, however, be wary of "easy" permanency planning decisions, in which adoption by the foster family becomes the alternative permanency plan because the child is "doing alright" with the foster family. The purpose of the alternative plan for the permanent placement of the child is to identify **all** options for the child's placement, and to **thoroughly** assess the child's needs and the potential placements, to locate the adoptive placement that will best meet the child's needs. The purpose of concurrent planning is to make those efforts as early as possible in the process. Concurrent planning should therefore trigger the following agency processes:

- Preparation of the child's full social history,
- Identification of the child's needs, and
- A search for adoptive home studies that appear to match the child's needs.

◆ **Use of Foster-Adopt Homes**¹³

"The dominant feature of the special needs¹⁴ adoptive family is that the vast majority of them have been foster parents first."¹⁵ This is a vast change over practice in the 1950s, when foster parents were discouraged from forming attachments with foster children and children were

¹³ Although relative homes can be licensed as foster homes, there are significantly different dynamics in foster families that are relatives and those that are not. Consequently, the term "foster home" is used to mean the licensed home of a non-relative, and the term "relative home" is used to mean the home of a relative, whether or not the home is licensed as a foster home.

¹⁴ "Special needs" is a term defined by state policy that refers to factors which may make it difficult to place a child for adoption. The factors might include older age at adoption (often six years of age or older); membership in a sibling group; emotional, developmental, or behavior problems; and serious medical conditions.

¹⁵ McKenzie, J., *Adoption of Children with Special Needs, the Future of Children*, ADOPTION 3(1), Packard Foundation, Los Angeles, CA (1996).

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moved regularly to avoid such attachments. We now know that multiple moves can break the bonds of trust and attachment formed by the child and consequently, multiple moves harm the child. Multiple moves compound the original trauma of abuse and neglect, often leading to long-term adjustment and attachment difficulties.

Multiple placements can be avoided for a child who cannot be placed with relatives by using foster-adopt homes, also called legal risk homes or resource homes. These parents have been licensed to provide a temporary foster home, but if the child cannot be reunified with the birth family, then the home becomes the adoptive home for the child.

The use of foster-adopt and relative-adopt homes can, however, present their own dilemmas. The foster family or relative family face a difficult conflict when reunification is the long-term goal, but the family wants to adopt the child if reunification fails. In such cases, the foster family or relative family may intentionally or unintentionally present obstacles to reunification.

As noted in the previous section, it is critical that foster and relative families receive additional training and that interactions between the foster family or relative, the birth family and the child are carefully monitored, to ensure the occurrence of good faith efforts at reunification under concurrent planning.

The use of foster-adopt and relative-adopt homes also requires that the planning for the child's alternative permanent placement be "front-loaded." Alternative permanency planning means more than finding any available home for the child. It means identifying all the potential options for the child's placement, assessing the child's needs and the potential placements, and selecting the option that best meets the child's needs. If a child's temporary home may become the child's permanent home, then this planning must be done as early as possible in the process, to ensure that the home is the one that best meets the child's needs.

◆ **Family Decision-Making**

The purpose of this best practice technique is to build better alliances among the family, the child welfare agency, the child's tribe, where applicable, and the court for the purpose of providing a safe and permanent home for the child. To avoid the dynamic of the "system" telling the family what they need to do to fix their problems and the family resisting the intrusion, family decision-making builds communication, cooperation and collaboration between the family, the child's tribe, when applicable, and child welfare professionals.

Family decision-making (also referred to as family group conferencing and family unity meetings) recognizes that families have the most information about themselves and have the ability to make well-informed decisions. Instead of acting as adversaries trying to keep information from the authorities, family members become active participants in the decision-making process

The Idaho Department of Health and Welfare uses the family unity meeting for case plan preparation. It is a pre-ASFA concept, and is based on consensus model.

Common values across all models reflect that the process is family-focused, strength-based, community-based, and culturally appropriate. Details of models vary to some degree but generally involve the following.

- All family members who wish to be present at the family meeting are invited. Assistance, if needed, is provided to enable their attendance. Some models give the parents veto power over which family members may attend. If the child is an Indian child, a representative from the child's tribe should be invited to attend.
- The family can identify other non-family supportive individuals who are also invited.
- An independent coordinator arranges the meeting. The caseworker is present but does not lead the meeting.
- Information is shared by all present, usually starting with the caseworker who presents the facts of the neglect or abuse and related information to the family. The family asks questions of the caseworker and others to make sure they have full information regarding the issues.
- In most models, the professionals leave the room and allow the family to discuss the case in private. The family's job is to create a plan to ensure that the child is cared for and protected from future harm. In some models, the professionals are permitted to remain in the room.
- The family presents and explains their plan to the professionals, who have veto power. Consensus can usually be reached.¹⁶
- The court must ultimately approve the plan.¹⁷

Use of family decision-making, in addition to assisting the family with timely reunification, can assist the family to understand when reunification is not possible. Family decision-making can also help overcome resistance to severance of parental ties. By giving the family the opportunity to understand the need for permanency and security for the child in one stable home, family decision-making can open the door for relative and third-party adoption and, when appropriate, create a proposed plan that includes adoption with contact. Because family decision-making usually creates an agreed plan, lengthy trials of termination of parental rights and lengthy appeals can be avoided.

3. Important Permanency Definitions

◆ Preferred Options for Permanency

The first concept recognizes that some permanent options are preferred over others.¹⁸ The first preferred option for permanency is reunification with the biological parents. The next preferred

¹⁶ In New Zealand, where the Family Group Decision-Making model originated and is required in all cases of neglect and abuse, agreement is produced in approximately 90 to 95% of the cases, according to *Putting Families Back into the Child Protection Partnership: Family Group Decision-Making*, by Lisa Merkel-Holguin, MSW, PROTECTING CHILDREN, Volume 12, Number 3.

¹⁷ Idaho Code §§16-1610, 16-1611(d), 16-1608(e)(4).

¹⁸ For Indian children, as required by ICWA, if the child cannot be reunited with the biological parents or Indian custodian, the next preferred option is permanent placement with an extended family member, regardless of whether the child has an attachment to the foster family. The next preferred option is placement with a member of the child's tribe, and lastly, with any other placement approved by the child's tribe. 25 U.S.C. §1915.

Judges often face the difficult decision of choosing among options for a child's permanent family. Three concepts assist in evaluating such options:

- Preferred options for permanency
- Permanency characteristics
- Compelling reasons

option is termination of parental rights and adoption. Permanent guardianship or permanent custody is the final preferred option for permanency when adoption is not possible or exceptional circumstances exist, but only if the relationship meets the legally secure components described in the next section.

◆ Permanency Characteristics

This second concept is very important to apply when a judge must decide whether a non-adoptive relationship with a relative or non-relative is an acceptable permanent plan. Permanency includes the following characteristics:

- A judicially created relationship that is intended to be permanent and self-sustaining; a relationship that will last through the child's minority and continue with lifetime family relationships;
- A legal relationship that is binding on the adults awarded care, custody, and control of the child;
- The parents in the permanent family have the right to protect, educate, have care and control of the child, have decision-making authority including medical care and discipline and have the power to represent the child in legal proceedings;
- The family is free from supervision by the child welfare agency and monitoring by the court;
- Biological parents cannot petition the court to terminate the relationship; and
- The court will only consider a change of custody if there is clear and convincing evidence that the custodian is unfit or has abused or neglected the child.¹⁹

Some states have statutes that create permanent relationships in addition to the biological parent relationship or adoption that encompass all of these characteristics. These legal relationships are usually called permanent guardianship or permanent custody.

In contrast, some state statutes provide for temporary custody and allow biological parents to file for a return of custody without any significant change of circumstance of the child. Such statutes do not meet the standard of permanency.

The Idaho guardianship statute does **not** meet the standard of permanency, primarily because any interested party can seek modification or termination at any time.²⁰

Even in states that provide legally permanent options of permanent guardianship and permanent relative custody, such relationships may not be eligible for the same subsidies and assistance that

¹⁹ Taken in part from *A Place to Call Home, Adoption and Guardianship for Children in Foster Care*, by Steve Christian and Lisa Ekman, National Conferences of State Legislatures, March 2000.

²⁰ Idaho Code §15-5-212, *see generally* Idaho Code §§ 15-5-201 to 15-5-212.

would be available with adoption. Lack of such resources could create future instability for a child with special needs.

◆ **Compelling Reasons**

The third and final permanency planning concept is the ASFA requirement of “compelling reasons.” If the child has been in the custody of the agency for 15 of 22 months, if the child is an abandoned infant, or if the court has found aggravated circumstances, the agency must file a petition to terminate parental rights unless the child is in the care of a relative, the agency has not made reasonable efforts to reunify the family, or the agency documents compelling reasons why termination would not be in the best interest of the child.²¹ The provisions of Idaho law are similar, but state law requires the court to make the determination of compelling reasons.²² So in other words, if the court decides that the permanent plan for the child is something **other** than its own family or a new permanent family, it must explain why.

Courts must be very careful that they do not abuse the option of compelling reasons and use it as an excuse for their failure or reluctance to move forward with permanency. Only in rare circumstances should the court agree to accept compelling reasons. A safe, nurturing, permanent home is in the best interests of all children. The following have been suggested as circumstances that might warrant a court’s acceptance of compelling reasons not to order the filing of a termination of parental rights petition at the permanency hearing.²³

- Services identified in the case plan were not provided in a timely fashion, the services are available, and the services make it possible for the child to return home safely within several months. If this happens, there has been a breakdown not only with the child welfare agency but also in the court’s review of the case.
- The parents have made substantial progress in eliminating the problems causing the child’s continued placement and it is likely that the child will be able to return home safely within several months. In this instance, the court should continue the permanency hearing for up to 90 days, at which time either the child returns home or another permanent plan is determined.
- A relative with whom the child has resided for an extended period in a stable relationship is willing and capable of providing permanent care for the child. However, the relative is opposed to termination and adoption and the state does not have a permanent guardianship or permanent relative custody statute. In this situation, the court should make additional efforts to assist the relative and family understand the importance of permanency and the option of adoption with contact.
- The Indian child’s tribe is culturally opposed to the concept of termination of parental rights and has offered a safe plan for the child in home approved by the tribe. This situation is acceptable because it complies with ICWA.²⁴

²¹ 42 U.S.C. §675(5)(E).

²² Idaho Code §§16-1623(i), 16-1615.

²³ Concepts taken in part from Mandatory Termination of Parental Rights Petitions: “Compelling Reasons” and other Exceptions Under the Adoption and Safe Families Act, by Mark Hardin, ABA Center on Children and the Law, 1999.

²⁴ See 25 U.S.C. §1915.

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- A teenager is firmly opposed to termination of parental rights and adoption and is likely to disrupt any adoptive placement. In this circumstance, the court should frequently review the child's current attitudes toward termination and look for every opportunity to revisit the question of adoption. The court should ask the youth whether she/he would like a permanent family and discuss the concept of adoption with contact with the youth.
- A child is not capable of functioning in a family setting. This exception should require review every 90 days. Even though the child cannot currently live with a family, the court should seek a family who will visit the child and provide a home for visitation and possible future adoption.
- A child has complex and expensive medical or other special needs and the state's adoption subsidy and other benefits are insufficient to reliably cover the costs of the child's present or anticipated care or treatment. Careful inquiry should be made into the adoption subsidy and other available benefits (such as Medicaid, or assistance for the developmentally disabled). Given the benefits available, this situation should be rare. If the child is not in a foster or relative home, the child still needs a committed family who will visit the child and open their home for visits from the child.

4. Idaho Law and Procedure for Permanency Planning

The portion of the Idaho Child Protective Act and the Idaho court rules governing permanency are found at Idaho Code §§ 16-1608, 16-1610, 16-1611, 16-1615, 16-1623(i), and Idaho Juvenile Rules 37, 39, and 40. This section summarizes those provisions. The Idaho child welfare agency in Idaho is the Idaho Department of Health and Welfare (IDHW).

At the adjudicatory hearing, the court determines whether the child comes within the jurisdiction of the Child Protective Act – if the child is abandoned, abused, neglected, homeless, or lacks a stable home environment. If the court determines that the child comes within the jurisdiction of the act, then the court decides the child's placement – whether the child is to be placed in the legal custody of the agency, or placed in the child's own home under agency supervision.

If the court determines that the child comes within the jurisdiction of the act, and if the CPA petition alleges aggravated circumstances, then the court also determines whether the parent(s) subjected the child to aggravated circumstances. If the court determines that the child comes within the jurisdiction of the CPA, then the nature and timing of the procedures following the adjudicatory hearing depend on whether the court finds that the parent(s) subjected the child to aggravated circumstances.²⁵

◆ Cases Where Aggravated Circumstances Are Not Found

If aggravated circumstances are not found, and the child is placed in the legal custody of IDHW, then IDHW must prepare a written case plan. The case plan must be filed with the court no later than 60 days from the date the child was removed from the home, or thirty days after the adjudicatory hearing, whichever occurs first. The planning hearing must be set for a date within

²⁵ Aggravated circumstances include but are not limited to: abandonment; torture; chronic abuse; sexual abuse; murder or voluntary manslaughter; aiding, abetting, attempting, soliciting, or conspiring to commit murder; felony assault resulting in serious bodily injury to any child of the parent; or prior involuntary termination of parental rights. Idaho Code §16-1608(e)(4).

five days of the filing of the case plan. The case plan must include a reunification plan, and an alternative permanent placement plan. At the planning hearing, the court decides whether to approve, modify, or reject the case plan.

After the planning hearing, the court must hold regular review hearings. The review hearings must be held within six months of the adjudicatory hearing and every six months thereafter. At the review hearings, the court reviews the status of the case and the case plan, and may enter orders as necessary to ensure the progress of the case.

If the child remains in the custody of IDHW, then the court must hold a permanency hearing. The permanency hearing must be held prior to twelve months from the date the child was removed from the home or from the date of the adjudicatory hearing, whichever occurs first. The permanency hearing can be combined with a review hearing. IDHW must prepare a written permanency plan, and file and serve the report at least five days before the hearing. At the hearing, the court decides whether to approve, modify, or reject the permanency plan.

After the permanency hearing, the court continues to hold periodic review hearings. The court holds periodic review hearings until the child is permanently returned home and the CPA case is closed, or until an alternative permanent placement for the child is finalized and the CPA case is closed. If the child continues to remain in custody after the permanency hearing, federal law requires the court to hold annual permanency hearings until the child is permanently returned home or until an alternative permanent placement for the child is finalized.²⁶

If aggravated circumstances are not found, and the child is placed in the child's home under the protective supervision of the agency, rather than in the custody of the agency, it is not clear if the CPA requires a case plan, a planning hearing, and review hearings.²⁷ Even if they are not required by statute, they are recommended as best practice. When a child is placed in the legal custody of the agency, the case plan must include a detailed reunification plan to ensure that reunification is successful, and a detailed alternative permanency plan in the event reunification is not successful. Similarly, when a child is placed in the child's home under the protection supervision of the agency, there should be a detailed plan to promote the successful and permanent resolution of the case, and an alternate plan if protective supervision proves insufficient.

◆ **Cases Where Aggravated Circumstances Are Found**

If aggravated circumstances are found, then reasonable efforts to reunify the child with its parents are not required. The court must hold a permanency hearing within 30 days after the

²⁶ 42 U.S.C. §675(5)(C).

²⁷ See Idaho Code §16-1608(g), which requires the agency to file a case plan within 30 days if the child is placed in state custody, and §16-1610, which requires the agency to file a case plan within 60 days after the child is placed in state custody or 30 days after the adjudicatory hearing, whichever is first. See also Idaho Code §16-1611, which requires a review hearing within six months after the child is found to be within the jurisdiction of the act, and every six months thereafter so long as the child remains in state custody.

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adjudicatory hearing.²⁸ IDHW must prepare a written permanency plan, and file and serve the plan at least five days before the permanency hearing. At the hearing, the court decides whether to approve, modify, or reject the plan.

After the permanency hearing, the court must hold regular review hearings. The review hearings must be held within six months of the adjudicatory hearing and every six months thereafter. At the review hearings, the court reviews the status of the case and the permanency plan, and may enter orders as necessary to ensure the progress of the case. The court continues to hold review hearings until the permanent placement for the child is finalized and the CPA case is closed. Federal law requires the court to hold annual permanency hearings until the permanent placement for the child is finalized.²⁹

5. Federal Funding for Foster Care and Adoption

The bulk of funding available for child protection services in Idaho comes from federal funds. A state whose child protection procedures are not in substantial compliance with ASFA can lose access to federal funding.³⁰ In addition, a child can lose eligibility for federal funding if certain ASFA requirements are not met in that child's case.

The court must make case-specific findings, documented in the court records, that the agency made reasonable efforts to finalize a child's permanent placement, within deadlines set by ASFA. If the court does not make the necessary findings by the deadline, the child will lose eligibility for federal funding. The funding can be reinstated once the required findings can be made.³¹ "Reasonable efforts" is discussed in further detail in later sections of this chapter.

In addition, when the court places a child in the custody of the agency, state law vests authority for the placement decision in the agency, subject to review by the court.³² Federal law requires that placement authority be vested in the agency for the child to be eligible for federal funds.³³ It is unclear whether the child will lose eligibility for federal funds if the court orders a particular placement for a child when custody of the child is vested in the agency.

Presumably the child would not lose eligibility if the placement were a contested issue, and the court determined the issue based on evidence in the record or on a reasonable agreement of the parties. The U.S. Department of Health and Human Services has a website with questions and answers about ASFA, in which the USDHHS states that "[a]s long as the court hears the relevant testimony and works with all parties, including the agency with placement and care

²⁸ The statute says the permanency hearing must be within 30 days after the court made the determination of aggravated circumstances. Idaho Code §16-1608(e)(4). In most cases, this determination would be made at the adjudicatory hearing. It is conceivable that there might be circumstances in which the state might petition for a finding of aggravated circumstances after the adjudicatory hearing, or that the parties may stipulate to a finding of aggravated circumstances prior to the adjudicatory hearing.

²⁹ 42 U.S.C. §675(5)(C).

³⁰ See 45 C.F.R. §§ 1355, 1356, and 1357.

³¹ 42 U.S.C. §675(5)(c); 45 C.F.R. §1356.21(b)(2).

³² Idaho Code §15-1623(h).

³³ See 45 C.F.R. §1356.71(d)(1)

responsibility, to make appropriate placement decisions, we will not disallow payments.”³⁴ The court can also require the agency to include the child’s foster care placement in the case plan or the permanency plan, and can reject a plan that includes an inappropriate placement. The case plan and permanency plan are discussed in further detail in later sections of this chapter.

B. The Case Plan and the Planning Hearing

1. Introduction

If aggravated circumstances are not found, then the agency must prepare a written case plan. The case plan must be filed with the court no later than 60 days from the date the child was removed from the home, or thirty days after the adjudicatory hearing, whichever occurs first. The planning hearing must be set for a date within five days of the filing of the case plan.³⁵

If legal custody of the child is vested in the agency, then the case plan must be a concurrent plan. It must include both a reunification plan, and an alternative permanent placement plan.³⁶ The agency must consult with the parents and the guardian ad litem in developing the plan.³⁷

At the planning hearing, the court decides whether to approve, modify, or reject the case plan. The case plan must be incorporated in an order directing the agency and the parents to comply with the plan.³⁸ Other parties or participants may also be required to comply with the plan, in appropriate circumstances.

The most important and most obvious function of the case plan is its planning function. CAREFUL PLANNING IS AN ESSENTIAL PREREQUISITE TO SUCCESSFULLY RESOLVING THE CASE, AND SUCCESSFULLY PROTECTING THE INTERESTS OF THE CHILD. Careful planning includes diligent investigation and implementation, and appropriate modification based on new information or changed circumstances. (Timely review hearings are also necessary, to assess progress on the case plan and to make appropriate changes. Review hearings are discussed later in this chapter, in Part D.)

The case plan provides the road map for resolving the case, to safely return the child home, or to provide the child with a new and permanent family, in as timely a manner as possible. Formulation of the case plan requires the agency to systematically analyze the issues that need to be resolved, and the actions necessary to address those issues, including services to be made available to the family and the child. The consultation and hearing requirements ensure that the parents and the guardian ad litem have a genuine opportunity for input on the plan. The requirements for filing a written plan prior to the hearing, the hearing, and court approval of the plan promote systematic analysis of the issues and options for resolution of those issues by all participants, their attorneys, and the judge.

³⁴ See question and answer no. 13 at www.acf.dhhs.gov/programs/cb/laws/qsett1.htm.

³⁵ Idaho Code §16-1610(a).

³⁶ Idaho Code §16-1610(c).

³⁷ I.J.R. 40(d).

³⁸ Idaho Code §16-1610(a)&(d).

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An equally important but less obvious function of the case plan is its enforcement function. It provides the benchmark for objectively measuring the parties' progress toward completion of the plan. THE CASE PLAN THUS BECOMES THE PRIMARY MECHANISM FOR HOLDING THE AGENCY AND THE PARENTS ACCOUNTABLE IN CPA CASES. If the court-ordered plan is specific as to the parents' responsibilities, and the parents do not comply, then it makes contempt sanctions available, and provides a record to support commencement of proceedings to terminate parental rights. If the court-ordered plan is specific as to the agency's responsibilities, and the agency does not comply, then it makes contempt sanctions available. It also provides a record for a finding that the agency has not made reasonable efforts to reunify the family or to finalize an alternative permanent placement for the child, which in turn affects the federal funding available to the agency.

The case plan should:

- Identify the current foster care placement for the child, including a statement of why that placement is the least disruptive environment and most family-like setting that meets the needs of the child.³⁹
- Specifically identify the services to be provided to the child and the foster family, including services to identify and meet any special educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the placement, or to ensure the stability of the placement.

The reunification portion of the case plan should:

- Identify all issues that need to be addressed before the child can safely be returned home, without agency supervision.
- Specifically identify the tasks to be completed by the agency, the parents or others to address each issue, including services to be made available by the agency to the parents and in which the parents are required to participate, and deadlines for completion of each task.
- Identify terms for visitation, supervision of visitation, and child support, where appropriate.

The purpose of the alternative permanency plan is to have a backup plan in place, ready for implementation, and ideally, already in the process of implementation, in case the reunification plan fails. A child's stay in foster care will be unnecessarily lengthened if alternative permanency planning is not initiated until after reunification fails. The alternative permanency plan should:

- Address all options for permanent placement of the child.
- Assess the advantages and disadvantages of each option, in light of the child's best interest.
- Include recommendations as to which option is in the child's best interest.

³⁹ There may be instances where the name and identify of the specific foster family should be kept confidential, for the safety of the child and the foster family. In such instances, the plan should sufficiently identify the nature of the foster care placement to enable the court to assess whether the placement is the least disruptive environment and most family-like setting for the child.

- Specifically identify the actions necessary to implement the recommended option, and deadlines for those actions.
- Address options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, organizations or community activities with whom the child has a significant connection.
- Identify further investigation necessary to identify and/or assess other options for permanent placement, to identify or implement actions necessary to implement the recommended placement, or to identify or implement options for maintaining the child's significant connections.

Ideally, the child's foster family placement during the reunification process will become the child's permanent placement if reunification fails. It is therefore essential that alternative permanency investigation and planning begin at the outset of the CPA case and diligently continue, concurrent with the participants' efforts at reunification.

2. Timing of the Hearing

The written case plan must be filed no later than 60 days from the date the child was removed from the home or 30 days from the date of the adjudicatory hearing, whichever is first. The case planning hearing must be held within five days after the plan is filed.⁴⁰ The deadline for filing the plan, and the date and time of the planning hearing, should be set by the court on the record at the adjudicatory hearing.

As in all child protective proceedings, the court should have a "just say no" policy on continuances. If a continuance is necessary, it should be for a short period of time, and the court should enter appropriate orders to ensure that all parties are prepared to proceed on the new date.

3. Agreements by the Parties

The parties may wish to submit a stipulated case plan at the planning hearing.

The court should ensure that the case plan has been thoroughly considered by all participants, especially both parents, if involved. With respect to the parents' responsibilities identified in the case plan, the court should specifically ask the parents, on the record, whether they are willing and able to comply, and whether there are any services they need or want that will enable them to address the issues that need to be resolved before the child can be safely returned home.

The court should ensure that the stipulated case plan is comprehensive, and addresses all the essential elements of a case plan. (The essential elements of a case plan are described in the introduction to this section, in part B.1, above.) If the stipulated case plan is not comprehensive, the court should address any omitted elements. The court might also adjourn the hearing for a short time (such as one day) to give the parties time to address the omitted elements.

⁴⁰ Idaho Code §16-1610(a).

4. Who Should be Present

Persons who should always be present at the planning hearing:

- Judge
- Parents whose rights have not been terminated, including putative fathers
- Age-appropriate children
- Indian custodian, the child's tribe and attorney, if applicable
- Foster parents
- Assigned case worker
- Attorney for parents (separate attorneys if conflict warrants)
- Guardian ad litem, attorney for guardian ad litem, and/or attorney for child
- Court reporter or suitable technology
- Security personnel
- Interpreter(s), if applicable

♦ **Judge**

Planning hearings should be conducted by the same judge or judicial officer who hears other stages of the proceedings. The involvement of one judge creates consistency in the directions given the family and agency, avoids rehashing old arguments, and allows the judge who presides over the planning hearing to be thoroughly familiar with facts adduced at previous hearings.

♦ **Parents whose rights have not been terminated, including putative fathers**

Since the goal of the case plan is family reunification, it is essential that the parents participate in the process, including a parent who did not previously live with the child. The

parents can provide information that is important to the successful development and implementation of the case plan. In addition, once the plan is approved by the court, it will define parental responsibilities, and the failure to comply with the plan may result in termination of parental rights.

♦ **Age-appropriate children**

Children should be present at some point during the hearing to give the judge the opportunity to observe them. Age-appropriate children can provide the court with information as to their perception of their needs, interests and concerns. Older children will often have questions regarding their circumstances, and their future. Some of their questions may be answered at the planning hearing, and the opportunity to participate may allow a child to have a greater sense of self-determination. A court may choose to have children present only during portions of the planning hearing. Special circumstances may infrequently justify the absence of children from an entire hearing.

♦ **Indian custodian, child's tribe and attorney, if applicable**

An Indian child's tribe has the right to notice and the opportunity to participate in all hearings concerning the child.⁴¹ For Indian children, the tribe often has information regarding the child and family that is critical to assisting the court in good decision-making regarding the child.

⁴¹ ICWA, 25 U.S.C. §§ 1912(a), 1911(c).

◆ **Foster parents**

Foster parents who care for and observe children on a daily basis are often in the best position to describe the present status of a child. Foster parents should be present both to make this information available to the judge, and to give the judge the opportunity to observe the foster parents.

Idaho law requires the foster parents to be given notice of the planning hearing, but specifically provides that they are not parties to the action.⁴²

◆ **Assigned caseworker**

The caseworker with primary responsibility for the case must be present to provide the court with complete, accurate, and up-to-date information at the hearing. Judges should **not** continue or delay a review hearing due to lack of information or case involvement by a caseworker. When important facts are not known, the hearing should be reset for an early date, and, if necessary, appropriate subpoenas should be issued.

◆ **Agency attorney**

It is important that the agency have effective representation at the hearing because the court's decisions concerning the case plan are crucial to its success. Important information is elicited at the planning hearing and the record established at that time can be critical to later case outcomes; an attorney is needed to help develop the record and note important evidence. The agency attorney can further case progress by obtaining court ordered evaluations, excluding a perpetrator from a household, or obtaining information important to the case. The agency may be represented by the county prosecutor, or the state attorney general.⁴³

◆ **Attorneys for parents (separate attorneys if conflict warrants)**

The presence of the parents' attorney at the hearing is vital to make sure that the agency is carrying out its responsibility to assist the parents. The attorney needs to correct the record to avoid negative or inaccurate information about the parents. The attorney needs to make sure that the parents' interests and views are taken into account in all decisions on placement, visitation, services, and case plan modifications.

◆ **Guardian ad litem, attorney for guardian ad litem, and/or attorney for child**

A well-trained legal advocate for the guardian ad litem and/or the child must be present to make sure that the child's interests are being protected and not being subordinated to the organizational needs of the agency or the convenience of agency personnel. The advocate also needs to ensure that the views of children are considered by the court.⁴⁴

⁴² Idaho Code §16-1601(b).

⁴³ See Idaho Code §16-1605.

⁴⁴ See Idaho Code §16-1618, which provides for appointment of a guardian ad litem for the child, appointment of an attorney for the guardian ad litem, and/or appointment of an attorney for the child.

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◆ **Court reporter or suitable technology, security personnel, and interpreters**

As in other stages of the hearing process, these staffing and equipment resources should be available for all planning hearings. If a parent or other essential participant is not fluent in English, a qualified interpreter must be present.

◆ **Persons whose presence may also be needed at the planning hearing:**

- Extended family members
- Other custodial adults (such as a representative from a residential facility where a child is placed)
- Prospective adoptive parents (if other than the foster parents)
- Adult or juvenile probation officer or parole officer
- Service providers
- School officials
- Other witnesses

Extended family members, service providers and others who work with the family can provide valuable information and recommendations to the court, and it can be helpful for all persons who are involved with the family to meet with each other. But their presence may be needed only if they may play a role in the case plan or if their testimony is needed for a disputed issue.

5. Key Decisions the Court Should Make at the Planning Hearing

The essential decision that the court must make at the planning hearing is whether to approve, modify, or reject the case plan. But to make that decision, the court should decide the following.

◆ **Whether the current foster care placement is the least disruptive environment?**

The court must determine whether the current foster care placement is the least disruptive environment and most family-like setting that meets the needs of the child. The court should also determine whether another foster care placement available that would better meet the needs of the child?

Placement with an individual or couple who already has a positive relationship with the child helps to provide the child with a greater sense of safety, security, and continuity. The family is the most likely, but not the only, source for such individuals or couples. In addition, placement with a family member may offer the opportunity for an agreed-upon solution to the problem, because a parent may be willing to stipulate to placement of the child in foster care if the parent knows the child will be with a family member.

There can, however, be problems with the placement of a child with a family member. First, because of the family member's relationship to the parent, and given the sometimes intergenerational aspects of neglect and abuse, the family member may unduly minimize the extent or the effects of the abuse or neglect, may be partly or primarily motivated by a desire to protect the parent from governmental intervention, or may also have a history of abusing or neglecting children.

Second, the family member may underestimate the potential difficulties in providing a home for the child, particularly since an abused or neglected child will likely have emotional, developmental, or behavioral problems that do not simply disappear when the child is removed from the abusive or neglectful parent. The family member may later seek to withdraw as a foster parent when unanticipated problems become apparent, creating further trauma for the child.

The court should make careful inquiry of the family member with whom the child will be living, to ensure that the family member understands the nature and extent of the commitment the family member is making. In addition, the process of licensing the family member as a foster care provider should assist in addressing these potential problems.

There is a preference for keeping siblings together. A child who has been removed from the parents should not also suffer the loss of being separated from brothers and sisters. If siblings can't be placed together, then the plan should address the provisions that will be made so that the siblings can maintain contact with each other. Separate placement of siblings may be necessary where one sibling is a juvenile offender and the other children are at risk of harm from the juvenile.

ICWA has detailed provisions governing preferences for both foster and adoptive placement of Indian children. Priority is given to members of the child's extended family, other members of the child's Indian tribe, or placements given priority by the child's Indian tribe.⁴⁵ One of the purposes of ICWA is to recognize the unique relationship between the United States and the Indian tribes;⁴⁶ another purpose is to enable the child to develop and/or maintain the child's ties to his or her cultural heritage.⁴⁷

Issues of race, ethnicity, and national and cultural heritage in foster and adoptive placements are highly controversial. ICWA establishes preferences for placement of Indian children with Indian families. There is no law establishing similar preferences for other groups. The Multiethnic Placement Act of 1994 as amended points the other way – by limiting the extent to which race, ethnicity, national or cultural heritage may be considered in placement decisions.⁴⁸ The purpose of that act was to remove barriers to permanency by prohibiting discrimination against children or prospective parents based on race or national origin. Specifically, the act sought to do away with the practice of “race-matching,” which resulted in large numbers of children spending long periods of time in foster care, waiting for prospective adoptive parents of the same race.

Ultimately, the resolution in any individual case will depend on the individual circumstances of that case. Although preferences may provide useful tools for analysis, ultimately, the successful placement of the child depends on thorough efforts to identify all possible placements, and thorough assessment of the advantages and disadvantages of each placement based on the child's individual needs. *IDHW has a best practices manual that identifies the long-term interests of the child, and the many considerations involved.*

⁴⁵ 42 U.S.C. §1915.

⁴⁶ 42 U.S.C. §1901

⁴⁷ 25 U.S.C. §1902.

⁴⁸ 42 U.S.C. §§ 1996(b).

When the court places a child in the custody of the agency, state law vests authority for the placement decision in the agency, subject to review by the court.⁴⁹ Federal law requires that placement authority be vested in the agency for the child to be eligible for federal funds.⁵⁰ It is unclear whether the child will lose eligibility for federal funds if the court orders a particular placement for a child when custody of the child is vested in the agency.

Presumably the child would not lose eligibility if the placement were a contested issue, and the court determined the issue based on evidence in the record or on a reasonable agreement of the parties. The U.S. Department of Health and Human Services has a website with questions and answers about ASFA, in which the USDHHS states that “[a]s long as the court hears the relevant testimony and works with all parties, including the agency with placement and care responsibility, to make appropriate placement decisions, we will not disallow payments.”⁵¹ The court can also require the agency to include the child’s foster care placement in the case plan, and can reject a plan that includes an inappropriate placement.

The plan should also address the options for maintaining the child’s ties to family, friends, or organizations that have a significant role in the child’s life. The child’s placement may afford the means for maintaining these significant connections. If not, then other means to maintain the child’s significant connections should be explored and identified.

◆ **Whether the plan specifically identifies the services to be provided to the child and the foster family**

The agency should assess whether the child has any special needs, and identify the services to be provided to address those needs. For example, the child may have special emotional, physical, educational or developmental needs. The court should inquire whether evaluations need to be done by medical health professionals, mental health professionals, or child development specialists, to determine whether the child has special needs and what services are available to address those needs. The child may have behavioral problems as a result of the parent’s abuse or neglect, or may need services to assist the child in adjusting to a new home. The child may have delinquency issues, and the plan may need to incorporate measures for agency personnel to coordinate with the child’s juvenile probation officer, or a representative from juvenile corrections agency.

In investigating the resources available to meet the child’s needs, efforts should be made to identify all the potential sources of services or assistance, including other programs available through the same agency, programs available through other agencies, or programs available through private foundations. Resources available from other agencies or private foundations are often overlooked. For example:

⁴⁹ Idaho Code §15-1623(h).

⁵⁰ See 45 C.F.R. §1356.71(d)(1)

⁵¹ See question and answer no. 13 at www.acf.dhhs.gov/programs/cb/laws/qsett1.htm.

- When the child reaches age 15½, IDHW is required to assess the child for independent living skills and special programs available under the independent living grant money that IDHW administers.
- A child with developmental disabilities qualifies for numerous services funded by Medicaid. The Adult and Child Developmental Centers offer services for developmentally disabled children and adults.
- Children with developmental disabilities, and children approaching the age of 18, may qualify for services from the Division of Vocational Rehabilitation, part of the Idaho Department of Education.
- The Casey Program is a private foundation in Idaho, operating primarily in Ada County. In addition to providing adoptive and temporary homes for teenagers, and services for Casey families, the program also provides resources to other children in foster care.

The agency should also address services to be made available to the foster parents. Just as the child may need assistance in adjusting to a new home, the foster family may need assistance in adjusting to a new member in the home. The foster parents may need education or counseling as to the effects of abandonment, abuse, and neglect to deal with the problem behaviors that can arise, and to assist the child in emotional healing and adjusting to a new home. If the child has special needs, the foster parents may need assistance in obtaining information, skills, or services to assist them in meeting those needs.

♦ **Whether the reunification plan identifies all issues that need to be resolved before the child can safely be returned home, without agency supervision.**

The issues might include, for example: parenting skills; anger management; drug/alcohol education, counseling, or treatment; drug testing; mental health evaluation, counseling, or treatment; home-keeping skills; home inspection; seeking/maintaining employment; vocational rehabilitation or job-related education; medical examination or treatment; etc.

♦ **Whether the reunification plan specifically identifies the tasks to be completed by the agency, the parents or others.**

It is essential that the reunification plan specifically identify all services to be made available by the agency to the parents, and in which the parent is required to participate, that will assist the parent in resolving all issues that need to be resolved before the child can safely be returned home, without agency supervision. It is this portion of the plan that will either enable the safe return of the child, or provide the basis for proceeding with termination. It is this portion of the plan that will provide the basis for a later finding of whether the agency made reasonable efforts to reunify. Specificity is essential to enforceability.

With respect to parents' responsibilities identified in the case plan, the court should specifically ask the parents on the record whether they are willing and able to comply, and whether there are any services they need or want that will enable them to resolve the issues that need to be resolved before the child can safely be returned home.

Agency personnel may be resistant to specificity, concerned that it may deprive the agency of needed flexibility, or that it may result in the judge (who is not a child welfare specialist)

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attempting to micromanage the caseworker (who is). These are legitimate concerns. The judge may be able to alleviate some of those concerns by clearly communicating the judge's intentions and expectations to the participants, and using a cooperative problem-solving approach to case planning. Concerns about flexibility can also be met through regular and timely review hearings, discussed later in this chapter, in Part D.

Drug and alcohol abuse is a frequent issue in child protection cases. A case plan that states that the parent will participate in drug or alcohol treatment is not sufficient. It is essential to identify the treatment provider, the treatment schedule, how the costs of treatment will be paid, and transportation for the parent, if necessary. Omission of these details can leave the door open for too many excuses for a parent's failure to complete treatment, or for the agency's failure to provide treatment services.

◆ **Whether the reunification plan includes appropriate terms for visitation and child support.**

It is important that the child have the opportunity for regular and meaningful contact with the parent, to maintain the parent-child relationship while efforts at reunification proceed. It is equally important that visitation include appropriate terms and conditions both to protect the child's safety, and to protect the child from undue distress that may result from a parent's inappropriate behavior during visitation, and to avoid undue disruption of the child's foster placement.

The plan should set forth provisions as to the frequency, duration, location, or other terms of visitation. Depending on the circumstances of the case, it may be appropriate to require supervised visitation, including therapeutic supervised visitation, in which a parenting skills counselor assists the parent in properly interacting with the child during visitation.

Parents who are able to pay should be expected to help cover the costs of foster care, and the amount and frequency of child support payments should be addressed in the case plan. The court should take care to avoid financial burdens that interfere with family reunification. Particularly inexpedient are delays in setting support followed by retroactive lump sum support orders. These often make it impossible for parents to maintain or to obtain residential space in preparation for the child's return home.

◆ **What further efforts are needed to address any element of the case plan?**

Of course, the court should not simply determine whether the plan includes every appropriate component, or includes appropriate provisions in each component. To the extent the plan is inadequate in any respect, the court should either modify the plan, or reject the plan and identify the respects in which the plan is inadequate. The agency and other participants can be more effective in meeting the judge's expectations if they know what those expectations are.

- ◆ Whether the alternative permanency plan addresses all options for permanent placement of the child.
- ◆ Whether the alternative permanency plan assesses the advantages and disadvantages of each option, in light of the child's best interest.
- ◆ Whether the recommended option is in the child's best interest.
- ◆ Whether the alternative permanency plan specifically identifies the actions necessary to implement the recommended option, and deadlines for those actions.
- ◆ Whether the permanency plan addresses options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, organizations or community activities with whom the child has a significant connection.
- ◆ What further efforts are necessary to finalize or implement the alternative permanency plan.

These decisions regarding the alternative permanency plan are the same as the decisions regarding a permanency plan, which is addressed later in this chapter, in Part C. Please refer to Part C. 5 for a detailed discussion of these decisions. As noted earlier, it is essential that alternative permanency planning begin as early as possible in proceedings. The alternative permanency plan not only ensures that there is a back-up plan in place if the reunification plan fails, but it promotes the careful selection of a foster placement that will fully meet both the child's short term needs, in the event reunification is successful, and the child's long-term needs, in the event that reunification is not successful.

- ◆ **The time and date for the next hearing, and whether any orders are needed to prepare for the next hearing.**

Idaho law requires the court to conduct a review hearing no later than six months after entry of the order finding the child to be within the jurisdiction of the Child Protective Act, and every six months thereafter so long as the child is in the custody of the agency.⁵² Recommended best practice is to hold review hearings every three months. Recommended best practice is for the court to conduct regular review hearings in all cases where the child is found to be within the jurisdiction of the act, whether the child is placed in the legal custody of the agency or placed under protective supervision of the agency in the child's own home. There is more information about review hearings later in this chapter, in Part D.

The court should set the date and time for the review hearing on the record prior to the conclusion of the planning hearing. The court should also enter any orders necessary to ensure that all participants are prepared for the next hearing. For example, transport orders may be necessary if a parent is in the custody of the Idaho Department of Corrections or in county jail, or if a child is in the custody of the Idaho Department of Juvenile Corrections or in detention.

6. Submission of Reports to the Court

The case plan is in effect the written report of the agency for the planning hearing. The case plan should include all the elements listed in the introduction to this section, in Part B.1. The court may also require the guardian ad litem to prepare a report for the planning hearing, to address in

⁵² Idaho Code §16-1611(c).

writing all or part of the issues to be addressed at the planning hearing.⁵³ If the court requires the guardian ad litem to prepare a written report, recommended best practice is to require the guardian ad litem to file and serve copies of the report on the parties at least five days prior to the hearing. If the court intends to require a written report of the guardian ad litem at the planning hearing, the order for the report should be entered at the adjudicatory hearing.

7. The Court's Written Findings of Fact, Conclusions of Law and Order at the Planning Hearing

The court should make written findings of fact and conclusions of law, in language understandable by the parties, and with enough detail to support the court's actions. As in other stages of the proceedings, the burden of preparing findings can be sharply reduced by incorporated well-prepared reports submitted by the agency or other participants. Once a plan is approved, or approved with modifications, the court must enter an order incorporating the plan and directing all participants to comply with the plan.⁵⁴ It is particularly important that the written findings, conclusions and order include the following:

- If any necessary parties were not present, a finding that proper notice was given.
- An order approving the case plan and ordering the participants to comply with the plan; an order modifying the case plan and ordering the parties to comply with the plan as modified; or an order rejecting the case plan, ordering the preparation and filing of a new plan by a specified date, with findings as to the defects to be remedied in the new plan.
- An order scheduling the next hearing, and any other orders necessary to prepare for the next hearing.

At the conclusion of the hearing, the court should advise both the parents and the agency of the consequences for failure to comply with the case plan, including the following:

- Warn the parents and the agency that failure to comply with the plan is subject to contempt, including the potential penalties for contempt.
- Warn the parents that failure to comply with the plan could result in the filing of a petition to terminate parental rights.
- Warn the agency that failure to comply with the plan could result in a finding that the agency failed to make reasonable efforts to reunify the family or to finalize a permanent placement for the child.

8. Conclusion

The case plan is **fundamental** to the child protection process. It provides the framework for analyzing what needs to be done, when and by whom. It provides the road map to safely reunify the child with the family, or to permanently place the child with a new family, in as timely manner as possible. It sets the benchmark against which future progress will be measured, and provides the primary mechanism for holding the parents and the agency accountable.

⁵³ See Idaho Code §16-1631.

⁵⁴ Idaho Code §16-1610(d).

C. Resource Guidelines

It is recommended that 60 minutes be allocated for each case planning hearing.

Hearing Activity	Time Estimate
1. Introductory Remarks <ul style="list-style-type: none"> • introduction of parties • advisement of rights • explanation of the proceeding 	2 Minutes
2. Adequacy of Notice and Service of Process Issues	3 Minutes
3. Child's Placement <ul style="list-style-type: none"> • adequacy and appropriateness of foster placement • services to child and/or foster parents • visitation and child support issues 	15 Minutes
4. Reunification Plan <ul style="list-style-type: none"> • issues to be resolved • tasks and services • deadlines 	15 Minutes
5. Alternative Placement Plan <ul style="list-style-type: none"> • investigation of options • assessment of options • further efforts • deadlines 	10 Minutes
6. Troubleshooting and Negotiations Between Parties <ul style="list-style-type: none"> • specifics of the case plan, what is expected of parents and agency • visitation and child support issues • discuss need for additional orders to facilitate case progress 	10 Minutes
7. Issuance of Orders and Scheduling of Next Hearing <ul style="list-style-type: none"> • preparation and distribution of orders to all parties prior to adjournment 	5 Minutes
Time Allocation	60 Minutes

D. Checklists

PLANNING HEARING CHECKLIST

Persons who should always be present at the planning hearing:

- Judge
- Parents whose rights have not been terminated, including putative fathers
- Age-appropriate children
- Indian custodian, the child's tribe and attorney, if applicable
- Foster parents
- Assigned case worker
- Attorney for parents (separate attorneys if conflict warrants)
- Guardian ad litem, attorney for guardian ad litem, and/or attorney for child
- Court reporter or suitable technology
- Security personnel
- Interpreter(s), if applicable

Persons whose presence may also be needed at the planning hearing:

- Extended family members
- Other custodial adults (such as a representative from a residential facility where a child is placed)
- Prospective adoptive parents (if other than the foster parents)
- Adult or juvenile probation officer or parole officer
- Service providers
- School officials
- Other witnesses

Key decisions the court should make at the planning hearing:

Whether to approve, modify or reject the case plan, based upon:

- Whether the current foster care placement is the least disruptive environment and most family-like setting that meets the needs of the child.
- Whether the plan specifically identifies services to be provided to the child and the foster family, including services to identify and meet any special educational, emotional, physical, or developmental needs of the child, to assist the child in adjusting to the placement, or to ensure the stability of the placement.
- Whether the reunification plan identifies all issues that need to be resolved before the child can safely be returned home, without agency supervision.
- Whether the reunification plan specifically identifies the tasks to be completed by the agency, the parents or others to address each issue, including services to be made available by the agency to the parents and in which the parents are to be required to participate, and deadlines for completion of each task.
- Whether the reunification plan includes appropriate terms for visitation and child support.

- Whether the alternative permanency plan addresses all options for permanent placement of the child.
- Whether the alternative permanency plan assesses the advantages and disadvantages of each option, in light of the child's best interest.
- Whether the recommended option is in the child's best interest.
- Whether the alternative permanency plan specifically identifies the actions necessary to implement the recommended option, and deadlines for those actions.
- Whether the alternative permanency plan addresses options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, organizations or community activities with whom the child has a significant connection.
- What further efforts are needed to address any element of the case plan.
- Time and date of next hearing, and whether any orders are needed to prepare for the next hearing.

Reports

Reports should be verified or in the form of an affidavit, and should address all the key decisions to be made by the court.

- Agency case plan
- GAL report (optional)

Findings of Fact, Conclusions of Law, and Order

- Findings and conclusions, incorporating case plan or other written reports as appropriate, in sufficient detail to support court actions.
- If any necessary parties are not present, findings that proper notice was given.
- Order approving plan or approving plan with modifications, and directing parties to comply with plan; or order rejecting plan, specifying aspects that are insufficient, and requiring filing of new plan.
- Order scheduling next hearing, and any other orders as necessary to prepare for the next hearing.